

6

CONSUMER RIGHTS AND THE DEFECTIVE NEW VEHICLE

§ 6. 1. Introduction

This consumer rights chapter describes your significant protections under Maine law when your new vehicle proves to be defective. It contains the following sections:

- § 6. 2. Maine's New Vehicle Lemon Law And Arbitration Services**
- § 6. 3. Manufacturers' Arbitration Programs**
- § 6. 4. Attorney General Mediation**
- § 6. 5. Immediate Rejection Of Defective New Vehicle**
- § 6. 6. Express And Implied Warranty Rights And The Right To Revoke Ownership**
- § 6. 7. Your Express Warranty Rights**
- § 6. 8. Your Implied Warranty Rights**
- § 6. 9. Your Rights To Damages**
- § 6. 10. Deceptive Failure To Disclose Repairs**
- § 6. 11. Where To Write With Your Complaint**
- § 6. 12. Loaner Vehicles**
- § 6. 13. Magnuson-Moss Warranty Act**
- § 6. 14. Warranty Rights Of Lessees**
- § 6. 15. Unfair Trade Practices**
- § 6. 16. Call For Help**
- § 6. 17. Summary Of Defective Vehicle Rights**
- § 6. 18. Maine Lemon Law Arbitration Program**
- § 6. 19. An Estimate Of The Average Life Of Vehicle Parts**

§ 6. 2. Maine's New Vehicle Lemon Law and Arbitration Service

Maine's new car Lemon Law can be found at 10 M.R.S.A. §§ 1161-1169. If the consumer (whether purchaser or lessee) reports serious defects to the dealer or manufacturer during the express warranty period, within two years of the date of delivery or during the first 18,000 miles of operation (whichever is earlier), the law requires the manufacturer to make the necessary repairs. By reporting these defects within the required time period, the consumer (purchaser or lessee) "freezes" his right to have these defects repaired, even if they continue after the expiration of that time period. If the dealer is unable to repair the defect, then under the Lemon Law the consumer may be eligible for either a new car or the return of the purchase price. Maine's Lemon Law protects not only purchasers of new motor vehicles but also persons who *lease* new motor vehicles.

In addition to this basic Lemon Law protection the state now offers the Maine Lemon Law Arbitration Program in which a consumer, without charge, can seek an arbitrator's decision as to whether the consumer's new car meets the statutory definition of a "lemon." If it does, then the consumer is entitled to a refund or a replacement vehicle. The arbitrator's decision will be made within 45 days of application. For more information, contact the Attorney General's Lemon Law Arbitration Program 207-626-8848.

For a more complete description of the Maine Lemon Law Arbitration Program, *see* § 6.18 to this chapter and Chapter 7 of this Guide, The Maine Lemon Law and State Arbitration.

§ 6. 3. Manufacturers' Arbitration Programs

Most manufacturers provide arbitration programs for their customers. These programs are available even if your car does *not* meet the statutory definition of lemon. Unlike the Maine Lemon Law Arbitration Program, which can only award a replacement or your money back, the manufacturer's arbitration program can order additional repairs. This arbitration service is provided free of charge. Your warranty booklet will tell you more about your manufacturer's program.

§ 6. 4. Attorney General Mediation

The Attorney General's Consumer Mediation Services is also available to you, free of charge. We can contact the dealer and the manufacturer and attempt to informally resolve your complaints. Business participation in such mediation is voluntary. Write or call our Consumer Mediation Service for more information (6 State House Station, Augusta, ME 04333-0006 (207-626-8849)).

§ 6. 5. Immediate Rejection Of Defective New Vehicles

A. Immediate Rejection

If you are sold a new car and it quickly becomes apparent it is seriously defective, the Maine Uniform Commercial Code (11 M.R.S.A. § 2-602) allows you to "reject" it within a

“reasonable time after delivery.”¹ Immediate rejection pursuant to 11 M.R.S.A. § 2-602 is available for a serious defect (nonconformity with a warranty), or even a number of minor defects. See §§ 5.2 - 5.4 in Chapter 5 of this Guide.

If your rejection is challenged by the dealer, then the *dealer* has the burden of proving it sold you a car without any significant defects. If rejecting your defective car has cost you money (e.g., towing fees, or the cost of renting needed alternative transportation), then you may be eligible for consequential and incidental damages as described at 11 M.R.S.A. § 2-715. *See below* §§ 6.9 and 6.12. The dealer does have the right to “cure” (repair) any minor defects before delivering the car or during your first few miles of use, but not afterwards.² However, your time to “reject” the car can be extended by the dealer’s attempt to “cure” the problems.³ But this early right to repair is only for minor defects. If the defect is serious (*i.e.*, it threatens the safety or usability of the car), then the dealer can “cure” it only by replacement or your money back.⁴

The same rejection law applies if the dealer fails to make the car available as promised. For example, you ordered a blue sports car and specified that delivery could be no later than June 1. You then find out the car will not be available on that date or the car that is delivered is red. You may reject the car and the dealer should refund your deposit.

B. How To Reject Your Car

To properly reject your car you must do it in accordance with the steps set forth in the Maine Uniform Commercial Code, 11 M.R.S.A. § 2-602. We strongly recommend that you consult an attorney concerning the proper method for rejecting a new car. To reject, you must:

- (1) *Notify the seller of your rejection.* The notice should be in writing stating the reasons for rejecting the goods (including your list of defects). You should mail the notice to the seller’s place of business and keep a copy for yourself
- (2) *Notify the seller within a reasonable time after the goods are delivered.* The law does not provide a specific time for rejection. If you do not notice the defect until after you have taken the car home, you must notify the dealer immediately, and you may not use the car as if you owned it.⁵
- (3) Allow the dealer to repair minor defects or, if the defect is substantial, replace the vehicle or return your money.⁶
- (4) Any use of the car may prevent you from rejecting it. You must also hold the car “with reasonable care” and permit the seller to remove it.⁷

¹ *Zabriskie Chevrolet, Inc. v. Smith*, 240 A.2d 195, 201-202 (N.J. 1968)(the Smiths properly “rejected” their car after transmission failed to work in the first couple of miles). Other states in addition to Maine have enacted similar versions of the Uniform Commercial Code.

² National Consumer Law Center, *Sales of Goods and Services*, § 2.10 (1982); *see* 11 M.R.S.A. § 2-508, Right to Repair Non-conformities.

³ *Capitol Dodge Sales, Inc. v. Northern Concrete Pipe, Inc.*, 38 U.C.C. Rep. 114 (Mich.Ct.App. 1983)(rejection was proper three days after purchase during which seller made attempts to cure).

⁴ *See* 11 M.R.S.A. § 2-508(2), which allows the dealer to “cure” a defect after the contract performance date only if the seller has “reasonable grounds to believe that the consumer still would have accepted the vehicle because the defects were minor and easily corrected;” *see also American Honda Motor Co. v. Boyd*, 475 So.2d 835, 840 (Ala. 1985)(no right to cure since the buyer accepted the car without knowledge of any non-conformity).

⁵ 11 M.R.S.A. § 2-602(2)(a). *See Schiavi Mobile Home v. Gagne*, 510 A.2d 236, 238 (Me. 1986).

⁶ 11 M.R.S.A. § 2-508.

⁷ 11 M.R.S.A. § 2-602(2).

- (5) Before you surrender the car to the dealer, make sure you have an expert inspect it and document its defects. This evidence may be necessary if the dealer sues you for breach of contract.

C. Practical Problems If The Dealer Refuses To Take Back Your Defective Car

If the dealer refuses to accept your immediate rejection pursuant to 11 M.R.S.A. § 2-602 (or a later “revocation” of ownership pursuant to 11 M.R.S.A. § 2-608, *see* § 6.7), then you should consult an attorney before taking further action. Mediation through the Attorney General’s office (*see* § 6.4) or arbitration of your dispute pursuant to the Maine Lemon Law (*see* §§ 6.2, 6.18) may provide an inexpensive alternative to litigation.

Further, there may be significant practical problems with immediately rejecting your car (or later revoking ownership). First, if the dealer refuses to take back the car you may have to sell it in order to recover your lost payments and expenses.⁸ Simply dropping the car off in the dealer’s lot is not necessarily a solution. You could lose whatever leverage possession of the vehicle gives you, (*e.g.*, the ability to have the car repaired by another garage and then sue the dealer or manufacturer for damages). In addition the dealer may start charging you a “storage” fee. Further, your situation is much more difficult if you have financed your car with a third party lender (*e.g.*, your credit union or bank).⁹ This lender has a security interest in your car and if you sell the car, you will be in default and the lender can sue you or repossess¹⁰ the car.

Your best course of action is to inform the third party creditor of your problems with the car. The lender can then exert pressure on the dealer to resolve your dispute or can give you permission to sell the car, with the proceeds going first to pay off your loan. If there is any money left over you could use it to satisfy your 11 M.R.S.A. § 2-711(3) security interest.

In summary, a dealer violates your rights when he refuses to accept your proper rejection of a defective car. But if mediation or arbitration is not successful, you will probably need an attorney to enforce those rights.

§ 6. 6. Express And Implied Warranty Rights And The Right To Revoke Ownership

Even if you do not qualify for protection under the new Lemon Law, you may still have recourse under the terms of your express warranty or under your Maine Implied Warranty rights.

⁸ If you have made any credit payments on the car, then you have a security interest in the goods. *See* 11 M.R.S.A. § 2-711(3). If you have lawfully rejected the car (or revoked ownership), you may sell the car to recover your losses, with the balance being returned to the dealer. Your resale of the car must follow the procedures of 11 M.R.S.A. § 2-706. *See Johnson v. GMC, Chevrolet Motors Div.*, 668 P.2d 139 (Kan. 1983)(buyer has the right to recover that portion of the purchase price already paid when rejection or revocation is proper).

⁹ If you have financed your car through the car manufacturer’s credit agency (*e.g.*, GMAC) or if the dealer has assigned your loan to another credit agency, then the credit agency possibly is a “holder in due course” and your rejection or revocation would be equally valid against both the dealer and the credit agency. (*See* 16 C.F.R. § 433 (1976). You should address your rejection or revocation to both the dealer and the credit agency.

¹⁰ Repossession may violate a higher priority security interest in the car held by the consumer.

§ 6.7. Your Express Warranty Rights

Under your written *express warranty*, you may have the right to ask *the manufacturer* for a replacement car or a refund if the problem results from a serious defect and not from owner abuse or failure to properly maintain the car. If the manufacturer refuses to acknowledge your rights, it may be necessary to sue the manufacturer. *Always give the manufacturer a chance to correct defects.* If it refuses or is unable to do so after a reasonable number of tries, you must stop using your car and notify the dealer you are “revoking acceptance.” Remember, if you complain about the defect during the express warranty period and the dealer fails to repair the problem, you have “frozen” your warranty rights as to that defect. The dealer cannot later claim that because your express warranty has expired, it is no longer responsible for trying to repair it.

Revocation is a drastic measure. Before revoking, we recommend that you contact an attorney and answer these questions:

- A. Can the problem be shown to be a defect? If the problem resulted from failure to maintain the car as directed in the owner’s manual or if it is caused by abuse or poor driving habits, you do not have a cause of action under the warranty.
- B. Does the defect substantially reduce the value of the car?¹¹
- C. Have I given the dealer a reasonable number of chances to fix the defect?
- D. Am I returning the car without damage (other than normal wear and tear and, of course, the defect)?
- E. Have I waited too long to return the car?
- F. Can I find another means of transportation while I wait for the situation to be resolved?
- G. Am I prepared to continue making payments to the bank if I have to?

You are entitled to a replacement or refund under the Federal Magnusson-Moss Warranty Act (15 United States Code 2301) (and your attorney fees!) if your car cannot be fixed, but the defect you are complaining about must be one that substantially reduces the value of your new car, and you must have given the manufacturer a reasonable number of chances to fix it.

A transmission that jumps from fourth to third gear as you are traveling down the highway at 55 m.p.h. is a problem that substantially impairs the value of your car. However, a window handle that periodically falls off the right rear door would not seem serious enough to warrant a refund.

Use your common sense in deciding whether to sue and in determining whether you gave the manufacturer reasonable opportunity to fix the car.

You may not revoke acceptance if the car has been substantially damaged—as a result of an accident, for instance. Also, you must revoke acceptance within a reasonable time after discovering the defect.

If you decide to revoke, do it right. Because the procedure is complicated and you may end up in court, we strongly recommend that you hire a lawyer before revoking. But remember: your best first remedy is to see if you qualify for State Lemon Law Arbitration Program (see above § 6.2).

¹¹ The Maine Supreme Judicial Court recently described a car that was “substantially impaired” as a car with “[a]ny defect that shakes the buyer’s faith or undermines his confidence in the reliability of the purchased item....” *Innis v. Methot Buick-Opel, Inc.*, 506 A.2d 212 (Me. 1986) (quoting *McCullough v. Bill Swad Chrysler-Plymouth, Inc.*, 449 N.E.2d 1289, 1294 (Ohio 1983); see also *Champion Ford Sales, Inc. v. Levine*, 433 A.2d 1218 (Md. 1981).

§ 6. 8. Your Implied Warranty Rights

Maine law also provides an implied warranty (11 M.R.S.A. §§ 314, 2-316(5)) that guarantees your new or leased car will, if properly maintained in accordance with directions in the owner's manual, continue to run with no major problems even after the written warranty runs out. So, if your new car breaks down two months after your written warranty expires, you are not necessarily out of luck. Under the Maine Implied Warranty Law, not only the manufacturer but also the dealer (or the lessor if a different party)¹² is responsible to you for a serious defect.

Under your implied warranty, you still have the right to expect the manufacturer or the dealer to replace defective parts if the vehicle was not abused and properly maintained. The implied warranty requires that your car and its component parts perform satisfactorily during their ordinary useful life as measured by the average life of similar new cars.¹³

Of course, if you, the manufacturer and the dealer cannot agree on what is reasonable, you may have to settle your differences in court. If your car is so defective as to be a violation of your implied warranty rights, then you have a good argument why you should not have to pay an extended warranty deductible. For an estimate of the useful life of different car parts, *see* § 6.19 of this chapter.

Generally, an implied warranty court action must be started within 4 years of when you purchased it.

§ 6. 9. Your Rights To Damages

If you were sold a defective car and you had to pay to have it repaired, you may be eligible for damages equal to the cost of the repair from either the dealer or the manufacturer. You may also be eligible for incidental damages (e.g., cost of towing a broken down car back to the dealer) and consequential damages (e.g., cost of necessary substitute transportation) (11 M.R.S.A. §§ 2-714, 2-715). Additionally, you might also recover the amount your vehicle has diminished in value because it had been damaged and repaired.¹⁴

§ 6. 10. Deceptive Failure To Disclose Repairs

If the dealer has made significant repairs to the "new" car you are purchasing, he should reveal

¹² On the theory that a lease is the sale of a "service," Maine consumers who lease cars primarily for their personal or family use should also have implied warranty rights from both the manufacturer and the lessor (11 M.R.S.A. § 2316(5)).

¹³ *See Suminski v. Maine Appliance Warehouse, Inc.*, No. 6113 (Me. Feb. 27, 1992). In this case the Maine Supreme Judicial Court found that a television seller's refusal to even acknowledge the buyer's implied warranty rights can be an unfair trade practice. The court also offered this guidance on what defects are so serious as to be breaches of the implied warranty:

In some circumstances a breach of the implied warranty of merchantability under the U.C.C. may be established by circumstantial evidence. *See e.g. A.A.A. Exteriors, Inc. v. Don Mahurin Chevrolet & Oldsmobile, Inc.*, 429 N.E.2d 975, 978 (Inc. App. 1982). In the case at bar, however, the television set was in all respects satisfactory during approximately thirteen months after it was purchased. For all that appears in the record, the malfunction at that time may have resulted from a defective switch, repairable at a small cost. We conclude that the sale of a major appliance with a switch that fails more than a year later, cannot support a finding that the entire appliance was unmerchantable when sold. To use an automotive example, an unmerchantable battery may not render an entire vehicle unmerchantable. *Cf. Tallmadge v. Aurora Chrysler Plymouth, Inc.*, 605 P.2d 1275, 1278 (Wash. Ct. App. 1979); *Tracy v. Vinton Motors, Inc.*, 296 A.2d 269, 272 (Vt. 1972).

¹⁴ *See Marchesseault v. Jackson*, 611 A.2d 95, 98 (Me. 1992) (homeowner entitled to damages measured *both* to the costs repairing the defective foundation and the decrease in value of home because the foundation was so defective that it needed to be repaired).

those repairs before you sign the purchase agreement. What repairs should be revealed? New paint? Repaired dents? In the past there has been no hard-and-fast rule. But in general, if the repair was so significant that it would have altered your decision to buy the car or the price you agreed to pay, then the dealer should have disclosed it. If the dealer did not, it could be a “failure to state a material fact” and an unfair trade practice.¹⁵

In 1997 the Legislature enacted a provision that deals specifically with this issue. Pursuant to 10 M.R.S.A. § 1174 (4) (E), the dealer is required to make a disclosure in writing “if the dealer has knowledge of the damage or repair or if the damage calculated at the retail cost of repair to the new motor vehicle exceeds 5% of the manufacturer’s suggested retail price.” The second part of this disclosure requirement apparently applies even if the dealer does not know of the repair. Finally, the dealer is not required to disclose repairs to “any glass, bumpers, audio system, instrument panel, communication system or tires that were damaged at any time if the glass, bumpers, audio system, instrument panel, communication system or tires have been replaced with original or comparable equipment.”

If you were sold a defective car and you had to pay to have it repaired, you may be eligible for damages equal to the cost of the repair from either the dealer or the manufacturer. You may also be eligible for incidental damages (e.g., cost of towing a broken down car back to the dealer) and consequential damages (e.g., cost of necessary substitute transportation) (11 M.R.S.A. §§ 2-714, 2-715). Additionally, you might also recover the amount your vehicle has diminished in value because it had been damaged and repaired.¹⁶

§ 6. 11. Where To Write Your Complaint

When you have a problem with your new car, go to the dealer first. If the dealer fails to correct the problem after you’ve given him a reasonable chance to do so, contact the manufacturer’s area representative and arrange an appointment. Your warranty booklet or your dealer will provide you with the proper address.

§ 6. 12. Loaner Vehicles

Under the Maine Uniform Commercial Code, if you have been sold a seriously defective car in violation of your implied warranty rights, you might very well be eligible for *consequential and incidental damages* (11 M.R.S.A. §§ 2-714, 2-715). When a new automobile proves to be seriously defective and must be repaired, the consumer is often forced to use alternative means of transportation during the period of repair. A simple solution to the consumer’s plight is for the dealer to provide a loaner car to the consumer while his vehicle is being repaired. Some dealers refuse loaner cars, yet the cost of the vehicle should be considered *consequential damages* resulting from the sale of a defective vehicle in breach of express or implied warranties of merchantability. Who should pay for the cost of the substitute vehicle in this situation? Both the manufacturer and the dealer can be held liable. Of course, the dealer can probably obtain reimbursement for the loaner from the manufacturer of the defective car.

¹⁵ *Pirozzie v. Penske Olds-Cadillac-GMC, Inc.*, 605 A.2d 373, 376 (Pa.Super.1992) (unfair trade practice to sell a car as new when dealer has significantly damaged or repaired it).

¹⁶ See *Marchesseault v. Jackson*, 611 A.2d 95, 98 (Me. 1992) (homeowner entitled to damages measured *both* to the costs repairing the defective foundation and the decrease in value of home because the foundation was so defective that it needed to be repaired).

§ 6. 13. Magnusson-Moss Warranty Act

Consumers have additional rights under the Federal Magnusson-Moss Warranty Act (15 U.S.C. §§ 2301-2312) (Supp. 1985) when the consumer good comes with a written warranty. If after a reasonable opportunity the dealer cannot fix the car, the consumer can sue for damages¹⁷ (including punitive damages)¹⁸ and other legal and equitable relief. The court can also award reasonable attorney fees.

Given that a new car buyer in Maine will receive the protections of the manufacturer's express warranty, the Maine Implied Warranty (*see* Chapter 4) and the Magnusson Moss Warranty Act, why should buyers also purchase Service Contracts? They shouldn't. Service Contracts are expensive and duplicative. They also typically state that their remedies do not apply if another warranty already covers the problem!

§ 6. 14. Warranty Rights Of Lessees

If you have leased your new vehicle from a dealer or his leasing agent,¹⁹ you are covered by the *Maine Lemon Law*. You should also have *implied warranty rights* against the manufacturer, dealer and lessor. *See* 11 M.R.S.A. § 2-1212. Further, the Maine U.C.C. (11 M.R.S.A. § 2316(5)(a)) prohibits disclaiming implied warranty protection for both consumer goods or "services" (including a car lease). Further, you may also be eligible for *Magnusson-Moss Warranty Act* protection (damages and attorney fees) because lessees should be included in the act's definition of a consumer as "any person to whom such product is transferred during the duration of an implied or written warranty...."²⁰

§ 6. 15. Unfair Trade Practices

Unfair or deceptive practices by a car dealer violate the Unfair Trade Practices Act (5 M.R.S.A. §§ 205-A-214). Pursuant to 5 M.R.S.A. § 213, if a car was purchased for personal, family or household purposes, consumers can bring a private unfair trade practice suit and, if successful, receive damages or their money back and reasonable attorney fees. (*See* Chapter 3 of this Guide.)

§ 6. 16. Call For Help

If neither the dealer nor the manufacturer respond satisfactorily to your complaint about a defective car, here are some suggestions for further help:

- A. *Arbitration*. If you wish to seek arbitration of your dispute, first call the Attorney General's Lemon Law Arbitration Program at 207-626-8848. If you are not eligible for this program you may want to contact the manufacturer's arbitration program. The address of your manufacturer's arbitration program can be found in your warranty booklet..
- B. *Credit Problems*. If you have a problem with the way your car is financed, call the Maine

¹⁷ *See Maserati Automobiles v. Caplan*, Nos. 87-1163 and 87-1635 (Florida Dist. Ct. of Appeals, Third District, March 29, 1988) (The purchaser of a defective automobile was entitled to recover, under a state lemon law and federal warranty law, both the purchase price of an automobile and collateral charges — insurance payments, rental car costs, and repair and hotel bills — plus damages for loss of the use of the car).

¹⁸ Punitive damages are available in Maine when the defendant acted with either express or implied malice. *See Tuttle v. Raymond*, 494 A.2d 1353 (Me. 1985).

¹⁹ This is the most common leasing arrangement. A manufacturer's subsidy such as GMAC or FMCC may provide financing for the lease, or take assignment of the lease

²⁰ 15 U.S.C. § 2301(3). *See also Freeman v. Hubco Leasing, Inc.*, 324 S.E.2d 462, 467 (Ga. 1985) (leasing agency is a "supplier" of a consumer product under Magnusson-Moss Warranty Act).

Bureau of Consumer Credit Protection. This Bureau is located at 35 State House Station, Augusta, ME 04333-0035 (207-624-8527 and 1-800-332-8529).

- C. *Attorney General Consumer Mediation Service.* If you wish further information on your rights as a new car buyer or you wish to utilize the Attorney General's Consumer Mediation Service, contact the Public Protection Unit, Office of the Attorney General, 6 State House Station, Augusta, ME 04333-0006 (207-626-8849; call between 9:00 a.m. and 12:00 noon).
- D. *Dealer Complaints.* If you have a complaint against a dealer in connection with an unfair sales practice or shoddy service, you may want to notify the state agency, which licenses Maine dealers. Contact the Secretary of State, 29 State House Station, Augusta, ME 04333-0029 (207-624-9000, extension 52143).
- E. *Safety Related Complaints.* If you have a complaint that deals with a safety problem with your car, you should contact the National Highway Traffic Safety Administration (NHTSA), U. S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590 (toll free 1-800-424-9393; TTY for Hearing Impaired, 1-800-424-9153). Also, recall notices, crash tests results, tire quality ratings and safety publications from NHTSA are now available on-line, 24 hours a day through the FedWorld Information System. People with computer modems can enter the system by dialing 703-321-3339. Internet access is at www.fedworld.gov.
- F. *Warranty Suits.* If you decide to sue your manufacturer for a violation of your express or implied warranty rights, you should consider notifying the Warranties Project, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. (FTC hotline is 202-326-3323)
- G. *Secret Warranties.* Some manufacturers identify certain defects as eligible for "goodwill adjustments". These secret warranties are not publicized and consumers might have to make themselves pains-in-the-neck before the dealer or manufacturer will provide relief. One way to find out if your car is covered by a secret warranty is to contact the Center For Auto Safety, 2001 S. Street, N.W., Suite 410, Washington, DC 20009 (telephone: 202-328-7700). Include \$1.00 to cover the cost of handling and a self-addressed, stamped envelope (business size).

§ 6. 17. Summary Of Defective Vehicle Rights

Usually, your first course of action, when faced with a defective car, is to trust your dealer. But if the dealer cannot make the repair, or the defect is so serious you feel you must have a new car or your money back, aggressively defend your legal rights. Car owners have several different remedies and which one applies depends on when your defect becomes apparent:

- A. *First Few Days Or Week: Immediate Rejection.* If your car is immediately defective and the problem is so serious you do not want to repair it, tell your dealer to give you your money back. *See* § 6.5, Immediate Rejection.
- B. *Defects Slow To Appear: Warranty Repairs.* If a significant defect in your car's workmanship or materials appears months or even possibly years after purchase, and you have not been an abusive driver, you may have a good argument for free repairs and damages. *See* § 6.6-6.8, Warranty Repairs and § 6.13, Magnusson-

Moss Warranty Act.

- C. *Dealer Unable To Repair A Lemon: Your Money Back Or A New Car.* If your car is a “lemon” (car must be less than 2 years old and still have the manufacturer’s warranty), then you may be eligible for a new car or your money back under Maine’s Lemon Law or the U.C.C. remedy of revocation of ownership. *See* §§ 6.2, 6.6-6.8, 6.18).
- D. *If The Dealer Cannot Or Will Not Repair: Sue For Damages.* One strategy if your dealer can’t or won’t repair your defective car, is to have another garage repair it and sue in Small Claims Court for damages (up to \$4,500). *See* § 6.9, Your Right To Damages.
- E. *Unfair Trade Practices Are Illegal.* If your dealer treats you unfairly or deceptively, he may be in violation of the Maine Unfair Trade Practices Act. You can sue for damages or your money back and attorney fees. *See* § 6.15, The Maine Unfair Trade Practices Act and Chapter 3 in this Guide, Maine Unfair Trade Practices Act.

§ 6. 18. Maine Lemon Law Arbitration Program

A. What Is The Maine Lemon Law?

The Maine Lemon Law, 10 M.R.S.A. §§ 1161-1169, protects consumers who have serious defects in their new vehicles. The law defines a “lemon” as a new vehicle either *purchased* or *leased* in Maine, which is seriously defective, and which has not been repaired after a *reasonable number of attempts*. If your vehicle is found to be a lemon then the manufacturer must give you a replacement vehicle or refund your money.

B. What Is The State Lemon Law Arbitration Program?

If a substantial defect still exists or recurs after a reasonable number of repair attempts, the consumer has the right to a refund or a replacement vehicle. If the manufacturer refuses to take back your vehicle, you can seek a *State Lemon Arbitration Hearing* and receive a decision within 45 days. This state arbitration service is provided at no cost to you, except for the \$1.00 Lemon Law fee you pay when you buy a new car. Please keep in mind that not all car problems are serious enough to qualify for relief under the Lemon Law. You must apply for State Lemon Arbitration within 2 years from the date your car was originally sold and within the manufacturer’s warranty period.

C. What Vehicles Are Covered By The State Lemon Law Arbitration Program?

Any new car, motorcycle, van, truck, or recreational vehicle (RV) bought or leased in Maine from a new car dealer is covered during the Lemon Law’s “term of protection.” This Lemon protection period is the manufacturer’s express warranty, or two years from the date of delivery to the original consumer buyer, or 18,000 miles of use, whichever comes first. You must notify the manufacturer or the dealer about your vehicle’s defect before this protection period ends.

The Lemon Law also covers vehicles that are *resold* during this “term of protection”. The only new cars not covered are those purchased for a governmental agency, a business which registers three or more vehicles, or commercial vehicles weighing 8,500 pounds or more, or vehicles purchased in order to resell them.

D. What Problems Are NOT Covered By The State Lemon Law?

The Lemon Law does not cover vehicles with the following types of problems:

- (1) defects which do not substantially impair the vehicle's use, value, or safety;
- (2) defects caused by owner negligence;
- (3) defects resulting from accident, or vandalism;
- (4) defects resulting from unauthorized repair of the vehicle by a person other than the manufacturer, its agents or authorized dealers.

E. What Is Substantial Impairment?

The Lemon Law only covers serious defects — those, which substantially impair the use, safety or value of the vehicle. However, the law does not list specific defects, which are considered substantial. You must be able to demonstrate how your vehicle has been substantially impaired. For example, to prove substantial value impairment, you could show that the retail value of your vehicle is significantly less than it would be without the defect. Although a defect may be annoying, it is not necessarily substantial.

F. How Many Repair Attempts Before Your Car Is A Lemon?

The Lemon Law gives the manufacturer, its agent or authorized dealer a “*reasonable number of attempts*” to repair the substantial defect. The Lemon Law creates a *presumption* that a reasonable number of attempts has been allowed if either of the following happens within the law's “*term of protection*” (the manufacturer's express warranties, two years after delivery to the original buyer, or 18,000 miles of use, *whichever comes first*):

- (1) a repair is attempted *three or more times for the same substantial defect* (at least two of the repair attempts must be by the same dealer or the manufacturer);

OR

- (2) repair attempts for any substantial defect or combination of defects resulting in the vehicle being out of service for a cumulative total of 15 or more business days.

NOTE: A business day is any day that the service department of an authorized dealer is open for business.

If the defect continues or recurs despite the repair attempts and still substantially impairs your vehicle, then you can take the next step in the Lemon Law process — offering the manufacturer a final repair opportunity.

If your defect is so serious that you cannot wait (e.g., a safety problem) you do not necessarily have to meet the 3-repair attempts/out of service 15 days standard. However, you must give the manufacturer at least one opportunity to repair and then a “final opportunity to repair.”

G. What Is The “Final Repair Attempt” Requirement?

Once the manufacturer or authorized dealer has not been able to repair the substantial defect, and the problem continues or recurs, you must contact the manufacturer in writing and state that you want a refund or replacement and that you will give the *manufacturer* one *final repair opportunity*, of at least 7 business days, to fix the defect.

It is *essential* to keep copies of your request for a refund or replacement, as this is a necessary step before you can receive Lemon Law relief. Once the manufacturer receives your letter, the manufacturer will have 7 business days to make a final repair attempt. You must cooperate with this final repair attempt in order to be eligible for Lemon Law relief. You can contact the State Lemon Law Arbitration Program for a form letter, which can be used as notification of the final repair opportunity.

H. For Help?

Here are two ways the Attorney General can help:

(1) To file a new car complaint against a dealer or manufacturer, call or write:

Consumer Information and Mediation Service
Department of Attorney General
Public Protection Division
6 State House Station
Augusta, Maine 04333-0006
207-626-8849 between 9 A.M. and 12 Noon

(2) Information on your rights under the Lemon Law and State Lemon Law Application Form:

Department of Attorney General
Lemon Law Arbitration Program
6 State House Station
Augusta, Maine 04333-0006
207-626-8848

§ 6.19. An Estimate Of The Average Life Of Vehicle Parts

These estimates are based on the judgment of a Maine mechanic skilled in car repairs and on estimates in *Kiplinger's Personal Finance Magazine* 66-67 (August 1992) and *Consumer's Digest* 35 (September-October 1993).

Air-Conditioner Compressor	80,000-100,000 miles
Alternator	60,000-100,000 miles
Battery.....	40,000-80,000 miles;3-5 years
Brakes, (Drum)	40,000-front;75,000 rear
(Disc).....	30,000-40,000 miles
Catalytic Converter	75,000-100,000 miles
Engine	90,000-130,000 miles
Engine Assembly	150,000-300,000 miles
Engine Belts	40,000-60,000 miles
Engine Cooling System	100,000 miles; 5 years
Exhaust System (single)	50,000 miles; 5 years
(large car).....	25,000 miles
Front End* (small car)	50,000 –60,000 miles
.....	(large car)30,000 miles
Fuel Injector.....	100,000-150,000 miles
Fuel Pump.....	70,000-90,000 miles
Manual Clutch Disc	60,000-75,000 miles
Master Cylinder	80,000-100,000 miles
Muffler and Pipes	50,000-80,000 miles
Pistons.....	150,000 miles
Power Window Motor	100,000 miles
PVC.....	12,000-50,000 miles
Radiator.....	100,000-150,000 miles
Radiator Hoses.....	40,000-60,000 miles
Rear End	Life of the Vehicle
Rear Shock Absorbers	50,000 miles
Rear Spring Absorbers.....	50,000 miles
Shocks*	25,000-40,000 miles

Springs* (small car).....	Life of the Vehicle
(large car).....	30,000-40,000 miles
Starter Motor.....	75,000-100,000 miles
Thermostat	40,000-60,000 miles
Tires*	30,000-50,000 miles
Transmission (automatic)	50,000-100,000 miles
(manual)	50,000-120,000 miles
Tune-up.....	15,000-25,000 miles
Valves	75,000-100,000 miles
Windshield Washer Pump	70,000-90,000 miles
Water Pump	60,000-80,000 miles
Wheel Bearing	50,000 (repacked every 25,000 miles)
Windshield Wiper Motor	70,000-90,000 miles

** depends on road conditions*